

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
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CHAPTER 173

HOUSE BILL 2254

AN ACT

AMENDING SECTIONS 41-619.51, 41-619.52, 41-619.53, 41-619.55, 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3008.18, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3013.11; RELATING TO THE BOARD OF FINGERPRINTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-619.51, Arizona Revised Statutes, is amended to
3 read:
4 41-619.51. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Agency" means the supreme court, the department of economic
7 security, the department of education, the department of health services, the
8 department of juvenile corrections, the department of emergency and military
9 affairs or the board of examiners of nursing care institution administrators
10 and assisted living facility managers.
11 2. "Board" means the board of fingerprinting.
12 3. "Expedited review" means an examination, in accordance with board
13 rule, of the documents an applicant submits by the board or its hearing
14 officer without the applicant being present.
15 4. "Good cause exception" means the issuance of a fingerprint
16 clearance card to an employee pursuant to section 41-619.55.
17 5. "Person" means a person who is required to be fingerprinted
18 pursuant to THIS ARTICLE AND any of the following:
19 (a) Section 8-105.
20 (b) Section 8-322.
21 (c) Section 8-509.
22 (d) Section 8-802.
23 (e) Section 15-183.
24 (f) Section 15-534.
25 (g) Section 15-1330.
26 (h) Section 15-1881.
27 (i) Section 26-102.
28 (j) Section 36-411.
29 (k) Section 36-425.03.
30 (l) Section 36-446.04.
31 (m) Section 36-594.01.
32 (n) Section 36-594.02.
33 (o) Section 36-882.
34 (p) Section 36-883.02.
35 (q) Section 36-897.01.
36 (r) Section 36-897.03.
37 (s) Section 36-3008.
38 (t) Section 41-1964.
39 (u) Section 41-1967.01.
40 (v) Section 41-1968.
41 (w) Section 41-1969.
42 (x) Section 41-2814.
43 (y) Section 46-141, subsection A.
44 (z) Section 46-321.

1 Sec. 2. Section 41-619.52, Arizona Revised Statutes, is amended to
2 read:

3 41-619.52. Board of fingerprinting; organization; meetings

4 A. The board of fingerprinting is established consisting of the
5 following members:

6 1. A representative of the supreme court who is appointed by the chief
7 justice of the supreme court.

8 2. A representative of the department of economic security who is
9 appointed by the director of the department of economic security.

10 3. A representative of the department of education who is appointed by
11 the superintendent of public instruction.

12 4. A representative of the department of health services who is
13 appointed by the director of the department of health services.

14 5. A representative of the department of juvenile corrections who is
15 appointed by the director of the department of juvenile corrections.

16 B. At its initial meeting and annually thereafter, the board shall
17 elect a chairperson and vice-chairperson from among its members and any other
18 officers that are deemed necessary or advisable.

19 C. The board shall meet at least once each calendar quarter and
20 additionally as the chairperson deems necessary. A majority of the members
21 constitutes a quorum for the transaction of business.

22 D. Board members:

23 1. Serve at the pleasure of the appointing authority.

24 2. Are not eligible for compensation but are eligible for
25 reimbursement of expenses pursuant to title 38, chapter 4, article 2.

26 3. SHALL HAVE A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO
27 CHAPTER 12, ARTICLE 3.1 OF THIS TITLE.

28 E. The chief justice, the superintendent of public instruction or a
29 department director may designate an alternate member to represent a member
30 who is appointed pursuant to subsection A by the chief justice, the
31 superintendent of public instruction or a department director, respectively.

32 Sec. 3. Section 41-619.53, Arizona Revised Statutes, is amended to
33 read:

34 41-619.53. Board of fingerprinting; powers and duties;
35 personnel; liability

36 A. The board of fingerprinting shall:

37 1. Determine good cause exceptions pursuant to section 41-619.55. The
38 board may appoint a hearing officer to ~~determine~~ RECOMMEND THAT AN APPLICANT
39 BE GRANTED OR DENIED A good cause ~~exceptions~~ EXCEPTION AFTER THE HEARING
40 OFFICER CONDUCTS AN EXPEDITED REVIEW OR A GOOD CAUSE EXCEPTION HEARING.

41 2. Adopt rules to implement this article, including rules to establish
42 good cause exceptions for the issuance of fingerprint clearance cards
43 pursuant to section 41-1758.03. This rule making is exempt from the
44 requirements of chapter 6 of this title.

1 3. Administer and enforce this article and rules adopted pursuant to
2 this article.

3 4. Furnish a copy of its rules, on request, to all applicants who
4 petition the board for a good cause exception pursuant to section 41-1758.03
5 and, on request, to licensees, contract providers and state agencies.

6 5. Establish fees.

7 B. IN ORDER TO GRANT A GOOD CAUSE EXCEPTION, A MAJORITY PLUS AN
8 ADDITIONAL MEMBER, OF THE MEMBERS PRESENT, MUST VOTE TO APPROVE THE
9 APPLICATION. If the board ~~or its hearing officer~~ grants a good cause
10 exception, the board shall request in writing that the department of public
11 safety issue a card to the applicant. ~~If the board grants a good cause~~
12 ~~exception, the board's decision must be unanimous.~~

13 C. The board may employ clerical, professional and technical personnel
14 subject to fee monies that are collected and to the budget that is approved
15 by the board members and shall prescribe personnel duties and determine
16 personnel compensation. PERSONNEL EMPLOYED BY THE BOARD MUST HAVE A VALID
17 FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO CHAPTER 12, ARTICLE 3.1 OF THIS
18 TITLE. IF THE APPLICANT IS DENIED A FINGERPRINT CLEARANCE CARD, IN ORDER TO
19 BE EMPLOYED BY THE BOARD, THE BOARD MUST GRANT A GOOD CAUSE EXCEPTION
20 PURSUANT TO THIS ARTICLE BY A UNANIMOUS VOTE.

21 D. IN MAKING ANY RECOMMENDATION TO THE BOARD TO GRANT OR DENY A GOOD
22 CAUSE EXCEPTION, THE HEARING OFFICER SHALL CONSIDER ALL OF THE REASONS AND
23 CRITERIA PRESCRIBED IN SECTION 41-619.55, SUBSECTION E.

24 ~~D.~~ E. Members and employees of the board are not liable for acts done
25 or actions taken by any board member or employee if the members or employees
26 act in good faith following the requirements of this article.

27 Sec. 4. Section 41-619.55, Arizona Revised Statutes, is amended to
28 read:

29 41-619.55. Good cause exceptions; expedited review; hearing;
30 revocation

31 A. The board ~~or its hearing officer~~ shall determine good cause
32 exceptions. The board ~~or its hearing officer~~ shall determine a good cause
33 exception after an expedited review or after a good cause exception hearing.
34 The board ~~or its hearing officer~~ shall conduct an expedited review within
35 twenty days after receiving an application for a good cause exception.

36 B. Within forty-five days after conducting an expedited review, the
37 board ~~or its hearing officer~~ shall hold a good cause exception hearing if the
38 board ~~or its hearing officer~~ determines that the applicant does not qualify
39 for a good cause exception under an expedited review but is qualified to
40 apply for a good cause exception and the applicant submits an application for
41 a good cause exception within the time limits prescribed by rule.

42 C. When determining whether a person is eligible to receive a good
43 cause exception under an expedited review, the board ~~or its hearing officer~~
44 shall consider whether the person has shown to the board's ~~or its hearing~~
45 ~~officer's~~ satisfaction that the person is not awaiting trial on or has not

1 been convicted of committing any of the offenses listed in section
2 41-1758.03, subsection B or that the person is successfully rehabilitated and
3 is not a recidivist. Before granting a good cause exception under an
4 expedited review, the board ~~or its hearing officer~~ shall consider all of the
5 criteria listed in subsection E of this section.

6 D. The following persons shall be present during good cause exception
7 hearings:

8 1. The board or its hearing officer.

9 2. The person who requested the good cause exception hearing. The
10 person may be accompanied by a representative at the hearing.

11 E. The board ~~or its hearing officer~~ may grant a good cause exception
12 at a hearing if the person shows to the board's ~~or its hearing officer's~~
13 satisfaction that the person is not awaiting trial on or has not been
14 convicted of committing any of the offenses listed in section 41-1758.03,
15 subsection B or that the person is successfully rehabilitated and is not a
16 recidivist. NOTWITHSTANDING ANY OTHER LAW, THE BOARD MAY REQUIRE APPLICANTS
17 TO DISCLOSE EVIDENCE REGARDING SUBSTANTIATED ALLEGATIONS OF CHILD ABUSE OR
18 NEGLECT FOR CONSIDERATION IN DETERMINING AN APPLICANT'S SUCCESSFUL
19 REHABILITATION. The board ~~or its hearing officer~~ shall grant or deny a good
20 cause exception within eighty days after the good cause exception hearing.
21 Before granting a good cause exception at a hearing the board ~~or its hearing~~
22 ~~officer~~ shall consider all of the following in accordance with board rule:

23 1. The extent of the person's criminal record.

24 2. The length of time that has elapsed since the offense was
25 committed.

26 3. The nature of the offense.

27 4. Any applicable mitigating circumstances.

28 5. The degree to which the person participated in the offense.

29 6. The extent of the person's rehabilitation, including:

30 (a) Completion of probation, parole or community supervision.

31 (b) Whether the person paid restitution or other compensation for the
32 offense.

33 (c) Evidence of positive action to change criminal behavior, such as
34 completion of a drug treatment program or counseling.

35 (d) Personal references attesting to the person's rehabilitation.

36 F. If the board ~~or its hearing officer~~ grants a good cause exception
37 to a person, the board shall request in writing that the department of public
38 safety issue a fingerprint clearance card to the person.

39 G. The board's staff, under the direction of the executive director of
40 the board, shall review reports it receives of the arrest, charging or
41 conviction of a person for offenses listed in section 41-1758.03 who
42 previously received a fingerprint clearance card. Except as provided by
43 subsection J of this section, the executive director shall report any arrest,
44 charge or conviction of a prohibited crime to the state agencies listed on
45 the applicant's fingerprint clearance card application.

1 H. The board may request in writing that the department of public
2 safety revoke a person's fingerprint clearance card pursuant to section
3 41-1758.04 if the person received a fingerprint clearance card and the person
4 is subsequently convicted of an offense listed in section 41-1758.03,
5 subsection B or C.

6 I. Pending the outcome of a good cause exception determination, the
7 board or its hearing officer may issue interim approval in accordance with
8 board rule to continue working to a good cause exception applicant.

9 J. If the board's staff, under the direction of the executive
10 director, receives a report of an arrest, charging or conviction of a
11 prohibited crime for a person who previously received a fingerprint clearance
12 card pursuant to section 15-1881, the executive director shall not report
13 this information to the state agency that is listed on the applicant's
14 fingerprint clearance card application but shall notify the person issued the
15 fingerprint clearance card of the report.

16 K. The board is exempt from title 41, chapter 6, article 10.

17 L. A PERSON WHO IS REQUIRED TO OBTAIN A FINGERPRINT CLEARANCE CARD
18 PURSUANT TO SECTION 41-619.52 IS NOT ELIGIBLE TO RECEIVE A GOOD CAUSE
19 EXCEPTION PURSUANT TO THIS SECTION.

20 Sec. 5. Section 41-1758, Arizona Revised Statutes, is amended to read:
21 41-1758. Definitions

22 In this article, unless the context otherwise requires:

23 1. "Agency" means the supreme court, the department of economic
24 security, the department of education, the department of health services, the
25 department of juvenile corrections, the department of emergency and military
26 affairs, THE BOARD OF FINGERPRINTING or the board of examiners of nursing
27 care institution administrators and assisted living facility managers.

28 2. "Division" means the fingerprinting division in the department of
29 public safety.

30 3. "Good cause exception" means the issuance of a fingerprint
31 clearance card to an employee pursuant to section 41-619.55.

32 4. "Person" means a person who is required to be fingerprinted
33 pursuant to any of the following:

- 34 (a) Section 8-105.
- 35 (b) Section 8-322.
- 36 (c) Section 8-509.
- 37 (d) Section 8-802.
- 38 (e) Section 15-183.
- 39 (f) Section 15-534.
- 40 (g) Section 15-1330.
- 41 (h) Section 15-1881.
- 42 (i) Section 26-102.
- 43 (j) Section 36-411.
- 44 (k) Section 36-425.03.
- 45 (l) Section 36-446.04.

1 (m) Section 36-594.01.
2 (n) Section 36-594.02.
3 (o) Section 36-882.
4 (p) Section 36-883.02.
5 (q) Section 36-897.01.
6 (r) Section 36-897.03.
7 (s) Section 36-3008.
8 (t) SECTION 41-619.52.
9 (u) SECTION 41-619.53.
10 ~~(v)~~ (v) Section 41-1964.
11 ~~(w)~~ (w) Section 41-1967.01.
12 ~~(x)~~ (x) Section 41-1968.
13 ~~(y)~~ (y) Section 41-1969.
14 ~~(z)~~ (z) Section 41-2814.
15 ~~(aa)~~ (aa) Section 46-141, subsection A.
16 ~~(bb)~~ (bb) Section 46-321.
17 5. "Vulnerable adult" has the same meaning prescribed in section
18 13-3623.
19 Sec. 6. Section 41-1758.01, Arizona Revised Statutes, is amended to
20 read:
21 41-1758.01. Fingerprinting division; duties
22 The fingerprinting division is established in the department of public
23 safety and shall:
24 1. Conduct fingerprint background checks for persons and applicants
25 who are seeking employment with licensees, contract providers and state
26 agencies or seeking employment or educational opportunities with agencies
27 that require fingerprint background checks pursuant to sections 8-105, 8-322,
28 8-509, 8-802, 15-183, 15-534, 15-1330, 15-1881, 26-102, 36-411, 36-425.03,
29 36-446.04, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01, 36-897.03,
30 36-3008, 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969 and
31 41-2814, section 46-141, subsection A and section 46-321.
32 2. Issue fingerprint clearance cards. On issuance, a fingerprint
33 clearance card becomes the personal property of the cardholder and the
34 cardholder shall retain possession of the fingerprint clearance card.
35 3. On submission of an application for a fingerprint clearance card,
36 collect the fees established by the board of fingerprinting pursuant to
37 section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the
38 monies collected in the board of fingerprinting fund.
39 4. Inform in writing each person who submits fingerprints for a
40 fingerprint background check of the person's right to petition the board of
41 fingerprinting for a good cause exception pursuant to section 41-1758.03.
42 5. Administer and enforce this article.

1 Sec. 7. Repeal

2 Section 41-3008.18, Arizona Revised Statutes, is repealed.

3 Sec. 8. Title 41, chapter 27, article 2, Arizona Revised Statutes, is
4 amended by adding section 41-3013.11, to read:

5 41-3013.11. Board of fingerprinting; termination July 1, 2013

6 A. THE BOARD OF FINGERPRINTING TERMINATES ON JULY 1, 2013.

7 B. TITLE 41, CHAPTER 3, ARTICLE 12 IS REPEALED ON JANUARY 1, 2014.

8 Sec. 9. Purpose

9 Pursuant to section 41-2955, subsection B, Arizona Revised Statutes,
10 the legislature continues the board of fingerprinting to conduct good cause
11 exception hearings for personnel who require a fingerprint clearance card.

12 Sec. 10. Retroactivity

13 Sections 7 and 8 of this act are effective retroactively to July 1,
14 2008.

APPROVED BY THE GOVERNOR MAY 8, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2008.